

ZONING BOARD OF REVIEW

Barrington, Rhode Island

November 19, 2015

APPLICATIONS #3816, #3822, #3823, #3824, #3825, #3826

MINUTES OF THE MEETING:

At the call of the Chairman, Thomas Kraig, the Board met with Mark Freel, Paul Blasbalg, Peter Dennehy, Elizabeth Henderson, Ladd Meyer and David Rizzolo.

Also present were Solicitor Andy Teitz, Building Official Bob Speaker and secretary Mary Ann Rosenlof.

At 7:03 P.M., Mr. Kraig called the meeting to order.

MINUTES OF THE PREVIOUS MEETING:

MOTION: Mr. Rizzolo made a motion to approve the October 15, 2015 minutes as written. Mr. Dennehy seconded the motion and it carried unanimously (5-0).

Continuation of Application #3816, Louis Jendza, 85 Boyce Ave., Barrington, RI, applicant and owner, for permission to rebuild home due to fire damage and add 2nd floor addition. Assessor's Plat 34, Lot 44, R-10 District, 85 Boyce Ave., Barrington, RI, requiring dimensional relief for maximum lot coverage, rear yard setback, side yard setback, and for construction within 100' setback from wetlands/water bodies.

Present: Louis Jendza, applicant & owner, 85 Boyce Avenue, Barrington, RI
Manual Alves, contractor, 6 Harvest Hill Road, Westport, MA

This application was continued from the September 17, 2015 Zoning Board meeting after the Board expressed concern that a 2nd floor addition over that portion of the house that is only 3' 4" from the property line would not be consistent with the character of the surrounding area nor would it be the least relief necessary.

Mr. Jendza explained that they revised the plans to move that portion of the 2nd floor in by 4 feet so it would be farther from the property line than in the original plans. To reduce it any further would make the 3rd bedroom extremely small and not practical.

The Board noted that this application was approved by the **Conservation Commission** in that they will rebuild on the original structure footprint. They also noted **Conditions of Approval:** 1) If any soil-disturbing work occurs, erosion control features (silt fence; hay bale) must be in place between the work zone and any surface water feature; 2) All construction material and equipment must be stored on the paved street or driveway away from water.

At 7:16 p.m., the public participation portion of the hearing was closed.

DISCUSSION:

- The applicant responded to the request of the Board at the first hearing and their new plan shows the *least relief* necessary because moving in any further from that side will make the bedroom extraordinarily small. They have also made bedroom 2 smaller and adjusted the bathroom to make this accommodation.
- That portion of the 1st floor is 3' 4" from the property line which is a condition that already exists. The adjacent house is also very close to the property line. The new 4 foot setback puts the 2nd floor at approx. 7' 4" from the property line, not that different from the 9' required if this were designated as an R-10 zone. This puts it in the character of the neighborhood where the houses are all very close together.
- There is a lack of concern from the neighbors and 3 neighbors had previously expressed their support of the proposal.
- The hardship is due to the unique character of the "tight" neighborhood that already exists.

MOTION: Mr. Rizzolo made a motion to approve the application along with the findings of the Conservation Commission's report dated 8-18-15 as previously addressed. Mr. Dennehy seconded the motion and it carried unanimously (5-0).

REASON FOR DECISION:

It was the judgment of the Board that the standards in § 185-69 have been met: A) that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and is not due to an economic disability of the applicant because this is a very tight lot and the need to rebuild is due to a fire; B) that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain because the house has been damaged by fire; C) that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the Comprehensive Plan because all of the properties have very tight lots and are close to the property lines, and the adjacent house is similar in scale and massing ; D) that the relief to be granted is the least relief necessary because the applicant has adjusted their plans and moved the 2nd story further from the property line as noted in the discussion above, and any additional setback from the property line would render the bedroom unusable. Additionally, the standards for a dimensional variance set forth in Section § 185-71 have been met because the applicant has proved that the hardship to be suffered by the owner, absent granting the relief, would amount to more than a mere inconvenience because without this variance, the applicant would not be able to have a 3 bedroom house, which is a very reasonable request.

Application #3822, Sam Havens & Audrey Kupchan, 16 Wildflower Rd., Barrington, RI, applicants and owners, for permission to remove an existing sunroom and build an office addition on existing slab. Assessor's Plat 11, Lot 42, R-40 District, 9 Strawberry Dr., Barrington, RI, requiring dimensional relief for side yard setback and construction within setback from wetlands/water bodies.

Present: Sam Havens, applicant
Ron Eaton, Capital Building & Design

Mr. Eaton presented copies of **Exhibit A**, a 6 page handout that included photos and plans. He explained that the existing heated sunroom is a living space that was there since the house was built in 1985 or 1986. The distance between the sunroom and the property line is not in the plans; however, the stone wall, as shown in Exhibit A, is on the lot line. The glass windows, both top and bottom, of the sunroom are all fogged. They would like to remove the existing sunroom (cement slab & 4' frost walls to remain) and square off the existing space by lifting the slanted roof and install a flat roof.

The Board did not have a clear understanding of the distance from the side yard property line and the sunroom because a plan had not been provided that gives a reliable dimension. Due to the lack of the appropriate dimensions in the plans, Mr. Teitz suggested that the application be continued.

MOTION: Mr. Dennehy made a motion to continue this application to the December 17, 2015 meeting when the applicant will return with a site plan, survey and full building plan. Mr. Blasbalg seconded the motion and it carried unanimously (5-0).

Application #3823, Thomas & Kathryn Bendheim, 7 Spinnaker Dr., Barrington, RI, applicants and owners, for permission to add on to the existing garage, build two additions, add front and side entry porches and add a balcony on the 2nd floor. Assessor's Plat 5, Lot 125, R-40 District, 7 Spinnaker Dr, Barrington, RI, requiring dimensional relief for construction within 100' setback from wetlands/water bodies and a special use permit for proposed construction within 100' of Wetlands Overlay District.

Present: Thomas Bendheim, applicant and owner
Scott Weymouth,

Mr. Bendheim explained that he and his wife have 4 children and there are 4 small bedrooms that exist on the 2nd floor. They would like to have a master bedroom on the 2nd floor. The house is built on a slab so there is no basement and no attic for storage. The requested expansion of the garage is for storage space. All of the proposed additions are further from the water than is the bulk of the existing house.

The Board noted that they have received a report from the Conservation Commission with a recommendation of approval with conditions.

Mr. Weymouth said that they are proposing a renovation of the first floor to change out cabinetry, creating a better mudroom and laundry between the garage and the house. The master bedroom is currently on the 1st floor and they would like to maintain this area for their parents when they visit. The addition of a study would be on the street side of the house away from the water. They need another bathroom for the 4 bedrooms and would like to develop the space over the garage for additional space for the kids.

In response to a question from the Board concerning water run-off regarding the proposed additions, Mr. Weymouth stated that in order to get CRMC approval, they need to develop a water management

plan because they have increased the roof area by more than 800 square feet. There will be an engineered system that will hold the water from the roof, either using drywells or other engineered system. The drawing has not yet been produced because they had to go through Zoning first.

The design is actually an improvement to the neighborhood and more pleasing than the original design.

At 8:07 p.m., the public participation portion of the hearing was closed.

MOTION: Mr. Freel made a motion to grant the special use permit with respect to the Wetlands Overlay District portion of the application, subject to the conditions set forth in the Conservation Commission's report. Mr. Dennehy seconded the motion and it carried unanimously (5-0).

REASON FOR DECISION:

It was the judgment of the Board that the standards in § 185-73 have been met A) that the public convenience and welfare will be substantially served because there will be no negative impact on the public; B) that it will be in harmony with the general purpose of this chapter, and with the Comprehensive Community Plan because there is no deviation to the general character of the neighborhood; C) that it will not result in or create conditions that will be inimical to the public health, safety, morals and general welfare of the community because there was no one there to speak of any adverse impacts nor were there any cited in the Conservation Commission's report; D) that it will not substantially or permanently injure the appropriate use of the property in the surrounding area or district. It was concluded that with regard to the specific Wetlands Overlay District requirements, that under § 185-175; because this proposed construction is no closer to the wetland than existing construction on the lot in question, it may be exempted from the one-hundred-foot setback requirement in § 185-174 because the Zoning Board of Review determined that there is no potential for significant environmental impact based on the report by the Conservation Commission and also because the applicant has advised the Board that they will have a water management plan approved by CRMC before any construction may begin.

MOTION: Mr. Freel made a motion to approve the dimensional variance portion of the application subject to the conditions set forth in the Conservation Commission's report. Mr. Dennehy seconded the motion and it carried unanimously (5-0).

REASON FOR DECISION:

It was the judgment of the Board that the standards in § 185-69 have been met: A) that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and is not due to an economic disability of the applicant because essentially all of the existing house is within the 100' setback ; B) that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain; C) that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the Comprehensive Plan since the neighboring houses are all of substantial size, and the revised house will be consistent with other houses in the area; D) that the relief to be granted is the least relief necessary in that they are not seeking any additional relief relative to the wetland except for the additional massing of the roof structure which will be addressed with the CRMC application, and

the layout of the existing house does not meet their needs. Additionally, the standards for a dimensional variance set forth in Section § 185-71 have been met because the applicant has proved that the hardship to be suffered by the owner, absent granting the relief, would amount to more than a mere inconvenience as noted in the discussion above regarding the need for additional space for their 4 children and visiting parents. Also, the standards of § 185-22 regarding the setback from wetlands and water bodies have been satisfied.

Application #3824, Michael Winitsky, 12 Melrose Ave., Barrington, RI, applicant, and Winlee, LLC, 12 Melrose Ave., Barrington, RI, owner, for permission to re-build an existing 2nd floor. Assessor's Plat 28, Lot 117, R-25 District, 12 Lillis Ave., Barrington, RI, requiring dimensional relief for front and side yard setbacks.

Present: Michael Winitsky, applicant
Molly Lee, Winlee, LLC, owner

Mr. Winitsky explained that the home is a 1930s bungalow where the 2nd floor height is 6' 4" at its highest and the "rooms" presently on the 2nd floor do not meet code requirements. They propose to rebuild the 2nd floor so it is 8' in height and create 3 bedrooms & 2 ½ baths. The existing home has two bedrooms and has one bath and a kitchen on the first floor. The original owners had two children that occupied the 2nd floor and the parents were on the 1st floor.

The house pre-existed the current R-25 zone and needs relief for the front and side yard in order to rebuild the 2nd floor; however, they will be on the same footprint as the existing house. The added height on the 2nd floor will allow the head room and added space to insulate the walls and attic space. The front of the house is 9' from the property line which is unchanged except for height. Mr. Winitsky also noted that the hardship is that this house does not comply with the code to be occupied on the 2nd floor and there are no legal bedrooms on the first floor.

The Board acknowledged that they are on a very small lot in an R-25 zone.

The hardship is that this house does not comply with code to be occupied on the 2nd floor and there are no legal bedrooms on the first floor.

At 8:40 p.m., the public participation portion of the hearing was closed.

MOTION: Mr. Rizzolo made a motion to approve this application. Mr. Freel seconded the motion and it carried unanimously (5-0).

REASON FOR DECISION:

It was the judgment of the Board that the standards in § 185-69 have been met: A) that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and is not due to an economic disability of the applicant, because they are improving a home that has fairly serious code non-conformities in ceiling height and minimum size rooms and is on a very small lot leaving little building area when it is in an R-25 zone; B) that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain because this is a pre-

existing condition that is being improved with this proposal ; C) that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the Comprehensive Plan because they made a serious effort to keep the scale of the house down on the street in the new design and limited the additional roof line height to beyond the 20 feet front yard setback; D) that the relief to be granted is the least relief necessary because they are renovating an existing house that is very small and in a neighborhood of small houses. Also, the increase in height is minimal at 6 feet. Additionally, the standards for a dimensional variance set forth in Section § 185-71 have been met because the applicant has proved that the hardship to be suffered by the owner, absent granting the relief, would amount to more than a mere inconvenience because there are serious code issues and this proposal will bring the home in conformance with current building codes and provide more adequate living space.

Application #3825, Roni Portugali, 18 Leslie Ave., Barrington, RI, applicant and owner, for permission to replace walls, roof & deck on same foundation. Assessor's Plat 13, Lot 79, R-10 District, 18 Leslie Ave., Barrington, RI, requiring dimensional relief for side yard setback and for construction within 100' setback from wetlands/water bodies.

Mr. Freel and Mr. Meyers recused themselves from this application.

Present: Roni Portugali, applicant and owner
 Maria Portugali, spouse of applicant

In the audience: Jean Poole, 24 Leslie Avenue, Barrington, RI

Mr. Portugali said that they would like to rebuild a back portion of their home due to structural failures over the last few years. There has been leakage and also flooding in the basement area.

Mrs. Portugali also said that on a windy day, her hair blows back while in the house and there has been snow in December inside the kitchen and living room. They would like to raise the roof line to make it flat, and elevate the living area by 7" on the water side of the house. The roofline will mimic the neighbor's roof line. They also need to replace and raise the deck so there is not a 15" drop-off between portions of the deck. The changes will be on the same footprint as the original home as it currently exists. The existing deck size will not change except that the width could possibly be reduced.

Ms. Poule expressed concern with water displacement with the change to a flat roof.

Mr. Portugali said that currently, the slope is to the back yard and they do not have gutters. Gutters will be added and controlled so the water will drain towards the back yard where they have a water management system (flower beds and pea stone) to accommodate their previous addition 7 or 8 years ago. There would be a slight slope to the new roof and they will do everything possible to be sure not to create any negative effects and will pitch the gutter to the opposite side.

There was discussion as to whether the water run-off is a zoning issue. Mr. Teitz said that it is not a zoning issue, but the applicant cannot make the run-off any worse and the Board can impose conditions if they wish.

At 9:15 p.m., the public participation portion of the hearing was closed.

MOTION: Mr. Blasbalg made a motion to approve this application subject to the conditions set forth in the Conservation Commission's report. Mr. Dennehy seconded the motion and it carried unanimously (5-0).

It was the judgment of the Board that the standards in § 185-69 have been met: A) that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and is not due to an economic disability of the applicant because it is a small lot for R-10 so there are pre-existing issues with respect to the setbacks; B) that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain because they are trying to make improvements and make the home more habitable; C) that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the Comprehensive Plan because the house will be essentially the same size as it is now; D) that the relief to be granted is the least relief necessary because they are not trying to add to the footprint but trying to modernize the home and fix the existing problems. Additionally, the standards for a dimensional variance set forth in Section § 185-71 have been met because the applicant has proved that the hardship to be suffered by the owner, absent granting the relief, would amount to more than a mere inconvenience in view of the present problems with the condition and functioning of the house.

Application #3826, Samantha Best o/b/o Magma Design Group, Inc., 10 Winthrop St., Rehoboth, MA, applicant, and Tracy Pereira-Baker & Michael Baker, 20 Freemont Ave., Barrington, RI, owners, for permission to construct a swimming pool. Assessor's Plat 7, Lot 94, R-40 District, 20 Freemont Ave., Barrington, RI, requiring dimensional relief for accessory structure setback.

Present: Neil Best, Registered Landscape Architect, Magma Design Group
Samantha Best, Senior Designer, applicant
Tracy Pereira-Baker & Michael Baker, owners

In the audience: Attorney Peter Skwirz, 450 Veterans Memorial Parkway, E. Providence, RI –
representing abutter Henry Collins, Jr., 35 Watson Avenue, Barrington, RI

Mr. Teitz advised that neither § 185-169; Wetlands Overlay District, nor 185-22 applies to this application. The proposed pool was represented as being at the 100' construction setback per CRMC, and all construction must receive CRMC approval.

Mr. Teitz expressed concern as to whether the Planning Board Decision for the property imposed any conditions, and whether any zoning relief had been required when the house was built. The applicant did not know.

The applicant indicated that the combination of CRMC's 75' buffer zone and 25' "landscaping" zone pushes all construction back from the water side and renders the back yard unusable for a pool; the only available space for a pool is to the east of the house. In addition, there is a deck on that side of the house, leaving only the space between that deck and the property line as a place for a pool.

The pool is 16' x 32', which the applicant indicated is the minimal size for a residential pool if you are going to incorporate a safe transition from the shallow to the deep end. In addition, since the fencing is on the perimeter of that portion of the property, rather than directly around the pool, they want to have an automatic pool cover, which necessitates a rectangular pool.

The pool pad (equipment, including a propane tank) will be located in close proximity to the pool to the east, requiring dimensional relief from the required 10' setback for accessory structures under 120 SF. The pool pad will be concealed by evergreen plantings along the property line. There is also a natural woodland screen between the two properties.

There were plans for a pool when the house was first built but without a deck and it did not encroach on the setback and, therefore, did not have to go before the Zoning Board. The deck was added later; Mr. Speaker advised that there was not a permit for the deck.

The Board indicated concern about the absence of evidence that CRMC would not permit a pool closer to the water.

The applicant has tried rotating the pool, but in each case it still falls within the setback. Even if the pool were moved closer to the house by reducing the deck, they would still need to maintain safe space around the pool and would need zoning relief.

Mr. Skwirz represents Mr. Collins, an abutter, who owns, directly or indirectly, Lots 92 and 93. They believe that the pool would be too close to the rear property (Lot 93); while that is currently an undeveloped lot, a pool placed as proposed might adversely affect a future sale of that property. Mr. Skwirz presented an earlier proposed Plan (no title) of where the Collin's home would be located showing a pool that was not constructed; a pool in that location required no zoning relief. This plan was provided to Mr. Collins when he purchased his property. Mr. Freel took a picture of the plan (**Exhibit A**) and it was entered into the record. Ms. Best said that she has a different plan provided by the CRMC that shows the proposed pool at a different angle.

The abutter would like to see the pool turned as shown in the original plans so there is a more than a 3' buffer. They also asked that the pool cover be opaque in color and the height of the fence be 6' to obscure the view of the pool from the property. They appreciate that there will be a vegetative buffer and would like that to be made a condition for granting this application.

Mr. Teitz produced an aerial photo of the properties on his phone; showed it to the Board and submitted the image as **Exhibit B** to be entered into the record.

The Board expressed a number of concerns about the application, which Mr. Rizzolo incorporated into a motion to continue this application to the January 21, 2016 meeting with a direction to the applicant to provide more information about the following:

- Are there any conditions of the subdivision that might limit what can be done with the property?
- Is there anything in the previous CRMC assent that may limit the pool location?
- The Board wants more information about CRMC's approach to the placement of the pool and whether there was a preliminary determination through CRMC for the 75' buffer.
- The Board would like clarification of the legal status of the deck.
- The Board would like further clarification about the Wetlands Overlay District and what, if anything, the Board needed to consider in that respect.

Mr. Dennehy seconded the motion and it carried unanimously (5-0).

ADJOURN:

There being no other business, Mr. Freel moved to adjourn at 10:12 p.m. and the meeting was adjourned.

Respectfully submitted,

Mary Ann Rosenlof, secretary
Thomas Kraig, Chairman

cc: Andrew Teitz, Solicitor, Amy Goins, Assistant Solicitor